In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1018

ROOSEVELT JOHNSON and ANTHONY BUCKNER,
PETITIONERS

v.

UNITED STATES OF AMERICA and
PANAMA CANAL COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The order of the district court is unreported. The opinion of the court of appeals (Pet. App. 8-9) is reported at 402 F. 2d 778.

JURISDICTION

The judgment of the court of appeals was entered on November 7, 1968. The petition for a writ of cer-

tiorari was filed on February 5, 1969. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether injured seamen employed by the Panama Canal Company (a federal instrumentality) and thus entitled to the administrative benefits of the Federal Employees Compensation Act may sue the United States for additional damages.

STATEMENT

Petitioners instituted these two actions under the Public Vessels Act, 46 U.S.C. 781 *et seq.*, and the Suits in Admiralty Act, 46 U.S.C. 741 *et seq.*, to recover damages for injuries allegedly sustained in the course of their duties as seamen aboard the SS CRISTOBAL. That vessel is owned and operated by the Panama Canal Company, incorporated pursuant to the Act of June 29, 1948, 62 Stat. 1075, under federal charter as a wholly-owned agency and instrumentality of the United States.

The district court granted summary judgment for the government on the ground that petitioners are federal employees limited to the benefits provided by the Federal Employees Compensation Act and therefore may not maintain suits for damages against the Government. The court of appeals unanimously affirmed (Pet. App. 8-9).

ARGUMENT

The decision below correctly applies this Court's settled interpretation of the impact of the Federal

Employees Compensation Act and is not in conflict with the decision of any other court of appeals.

The Federal Employees Compensation Act, 5 U.S.C. (Supp. III) 8101-8150,[1] provides a remedy for injuries incurred by Government employees in the performance of their duties. It covers employees of the Panama Canal Company (5 U.S.C. 8101(1)(A); see 5 U.S.C. 8146), and has done so since its enactment in 1916 (39 Stat. 742, 750).

This Court and the courts of appeals have consistently held that federal employees covered by the Compensation Act, and particularly federally employed seamen, are precluded from seeking damages against the United States or its instrumentalities under any general tort or liability statute. *Johansen* v. *United States*, 343 U.S. 427 (Public Vessels Act); *Patterson* v. *United States*, 359 U.S. 495 (Suits in Admiralty Act); *Jarvis* v. *United States*, 342 F. 2d 799 (C.A. 5), certiorari denied, 382 U.S. 831 (Suits in Admiralty Act); *Suhar* v. *United States*, 351 F. 2d 952 (C.A. 5) (general maritime law); *Aho* v. *United States*, 374 F. 2d 885 (C.A. 5), certiorari denied, 389 U.S. 930 (libel in admiralty). The settled principle of the *Johansen* and *Patterson* decisions was recently reaffirmed by this Court in *Amell* v. *United States*, 384 U.S. 158 at 160-161, and again in *United States* v. *Demko*, 385 U.S. 149, at 151-152.

This Court held in *Johansen* v. *United States*, *supra*, 343 U.S. at 435-438, that the savings clauses relating to the rights of seamen introduced into the Compen-

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[1] Formerly 5 U.S.C. 751-803.

sation Act in 1949,[2] upon which petitioners rely, gave seamen no affirmative rights, but merely assured that the other 1949 amendments to the Act would not affect any rights that federally employed seamen might previously have had apart from the Act. These clauses "do not even reflect a belief on the part of Congress that the remedy of compensation is not exclusive. * * * If the remedy of compensation was exclusive prior to the passage of the 1949 amendment, it is exclusive now." *Id.* at 438. And, as noted, the Court held that suits seeking additional remedies were, in fact, precluded by the longstanding comprehensive statutory scheme.

Petitioners contend that the effect of the Compensation Act upon employees of the Panama Canal Company should be different from its effect on employees of other federal instrumentalities because the Company, unlike the government generally, is subject to suit. In this regard, they rely upon *Gardner* v. *Panama R. Co.*, 342 U.S. 29. *Gardner*, however, involved a suit not by a federal employee but by an ordinary passenger on the Company's steamship, who was in no way affected by the Compensation Act. And *Cordero* v. *Panama Canal Co.*, 170 F. Supp. 234 (S.D. N.Y.), which did give a seaman rights such as petitioners claim here, was expressly overruled in *Mills* v. *Panama Canal Co.*, 272 F.2d 37 (C.A. 2), certiorari denied, 362 U.S. 961. In *Mills*, the Second Circuit held that a seaman on the very ship involved in the present case was barred from maintaining a tort suit

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[2] 5 U.S.C. 8116(c), 8150(a).

against the Company for work-connected injuries. The *Mills* decision and the decision of the Fifth Circuit in the present case are thus in complete agreement, and were correctly decided. The fact of the Company's amenability to suit in other types of cases is irrelevant to the impact of the comprehensive scheme established by the Compensation Act; since the Act applies to Company seamen exactly as it does to seamen employed by other agencies of the United States, it bars tort suits by Company seamen exactly as it bars such suits by other government seamen.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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